

REMARKS

This reply is in response to the Office Action of May 7, 2008. Claims 1 – 13 remain pending in the present application. Claims 1, 3, 5 – 7, 9, and 13 have been amended, claims 2, 4, 8, 10 – 12 have been canceled and new claims 14 – 19 have been added to the application. No new matter has been added by these amendments. Applicant respectfully requests reconsideration by the Examiner of the pending claims in light of the following remarks.

Claim Rejections based on Non-Statutory Double Patenting

In the Office Action, the Examiner rejected claim 13 on the ground of non-statutory obviousness type double patenting as being unpatentable over claim 3 of U.S. Patent No. 6,883,189 (the ‘189 Patent). The Applicant respectfully traverses this rejection. However, in an effort to expedite allowance of the present application, Applicant hereby submits with this response a terminal disclaimer.

Claim Rejections based on 35 U.S.C. § 112

Claims 3 – 5 stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite. Applicant respectfully submits that the above amendments overcome these rejections. Specifically, the above submitted amendments address the antecedent basis concerns of the Examiner with regard to claims 3 and 5. Claim 4 has been canceled by this amendment.

Claim Rejections based on 35 U.S.C. § 102 and § 103

In the Office Action, the Examiner rejected claims 1 and 7 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,701,702 to Diederich (“Diederich”). By the above submitted amendments, claims 1 and 7 have been amended to require a toilet plunger. Because

Diederich does not disclose a toilet plunger, Diederich cannot be found to anticipate claims 1 and 7.

Claim 2 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Diederich as applied in view of U.S. Patent No. 5,640,722 to Bui (“Bui”). By the above submitted amendment, claim 2 has been canceled but the Examiner’s argument will be addressed with respect to currently amended claim 1 and new claim 17, which now each call out for a toilet cleaning system comprising a toilet plunger.

With respect to claim 1, Applicant respectfully submits that the combination of Diederich and Bui do not disclose all elements of the claim. Bui teaches the storage of a plunger within a toilet tank. In Bui, the plunger is suspended within the toilet tank from the toilet tank cover. Bui does not disclose that the plunger is suspended “above [the] water reservoir” as required by claim 1. Rather, it is apparent at least from the drawings of Bui (e.g. Figure 1) that a plunger stored as in Bui would reach well within the water reservoir. In Diederich, a toilet cleaning brush holder is used to hold a toilet cleaning brush within a toilet tank. Diederich does not teach a plunger holder that positions the plunger such that it “do[es] not contact the apparatus necessary to operate the toilet” as required by claim 1. Rather, Diederich *requires* that the holder contact apparatus necessary to operate the toilet (overflow pipe 14). Thus, because neither Diederich, Bui, or a combination of the two references teach a holder configured to position a plunger both “above a water reservoir and apparatus necessary to operate the toilet” *and* “not contact[ing] the apparatus necessary to operate the toilet” claim 1 is not rendered obvious. As such, Applicant’s respectfully submit that the rejection of claim 2 does not apply to currently amended claim 1.

Claim 17 calls out for a “toilet plunger comprising a plunger cup fixedly and pivotally connected with a handle.” Neither Diederich nor Bui disclose such a toilet plunger. Because not all element of the claim have been presented, a *prima facie* case of obviousness has not been disclosed, and therefore Applicant respectfully requests allowance of claim 17.

Claim 6 stands rejected under 35 U.S.C. § 103(a) as being obvious in view of Diederich, Bui and U.S. Patent No. 6,055,680 to Tolbert (“Tolbert”). Applicant submits that claim 6 is not obvious in view of Diederich, Bui, and Tolbert because: (1) claim 6 depends from claim 1, which for at least the above-described reasons is not obvious in view of Diederich and Bui, and (2) Tolbert does not cure the above-described deficiencies of Diederich and Bui with respect to claim 1. Namely, Tolbert does not disclose a holder for positioning a plunger both (1) above the water reservoir and apparatus necessary to operate the toilet and (2) not in contact with the apparatus necessary to operate the toilet as required by claim 1. Because claim 1 remains unobvious in view of the cited references, and without conceding that Tolbert discloses the limitations of claim 6, claim 6 cannot be obvious in view of Diederich, Bui, and Tolbert.

In addition, Examiner rejected Claims 8 – 10, and 12 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,918,769 to Gandini (“Gandini”) in view of Bui. By the above amendments, claims 8, 10, and 12 have been canceled. Claim 9 depends from claim 1. Applicant submits that because Gandini does not cure the above described deficiency of Bui, claim 9 is allowable in view of a combination of these references. Specifically, Gandini discloses a dual chamber flush tank, one chamber including a water reservoir and apparatus for the operation of the toilet and the second chamber for housing washing means or a brush. The second chamber of Gandini is disposed along side the first chamber, and thus it is incapable of positioning a plunger “above [the] water reservoir and apparatus necessary to operate the toilet”

as required by claim 1. Because claim 1 is not obvious in view of Gandini and Bui, its dependent claim (claim 9), likewise is not obvious in view of those references.

Allowable Subject Matter

In the Office Action, Examiner indicated that claim 13 “would be allowable if rewritten in independent form including all of the limitations of the base claim.” In the above amendments, Applicant has complied with Examiner’s suggestion and has further submitted a Terminal Disclaimer in response to the double patenting rejection of the same claim. By such action, Applicant respectfully submits that claim 13 meets all statutory requirements and should be allowed.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,

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